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7 UNITED STATES OF AMERICA,  
8 Plaintiff,  
9 v.  
10 HELEN JEAN SINGH,  
11 Defendant.

Case No. CR 11-883-02 PJH

**ORDER DENYING MOTION TO DEFER  
RESTITUTION PAYMENTS**

Re: Doc. No. 80

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14 Defendant Helen Jean Singh has filed a motion to defer restitution payments until  
15 she is placed on supervised release. Doc. no. 80. The matter is fully briefed and suitable  
16 for decision without oral argument. For the reasons set forth below, defendant's motion  
17 to defer restitution payments is DENIED.

18 On January 28, 2012, defendant entered a guilty plea to one count of conspiracy  
19 to commit sex trafficking of children or by force, fraud and coercion in violation of 18  
20 U.S.C. § 1594(c). On November 28, 2012, defendant was sentenced to 108 months  
21 imprisonment, 5 years supervised release, \$45,000 restitution and special assessment of  
22 \$100. Doc. no. 77. The court ordered that “[p]ayment of restitution and all other  
23 monetary penalties (special assessment and/or fine) must be made during imprisonment  
24 and shall be paid at not less than \$25 per quarter through the Bureau of Prison's Inmate  
25 Financial Responsibility Program.” Defendant is currently incarcerated at the Federal  
26 Correctional Institution at Dublin, California. She seeks an order deferring her restitution  
27 payments until she is placed on supervised release when she will have an opportunity to  
28 obtain meaningful employment, due to the fact that she only earns \$15.60 per month at

1 her current work detail. Doc. no. 80. Defendant states that her mother tries to support  
2 her but is currently unemployed, so that defendant's funds will be reduced. *Id.*

3 Modification of the restitution payment schedule is governed by 18 U.S.C.  
4 § 3664(k), which provides as follows:

5 A restitution order shall provide that the defendant shall notify  
6 the court and the Attorney General of any material change in  
7 the defendant's economic circumstances that might affect the  
8 defendant's ability to pay restitution. The court may also  
9 accept notification of a material change in the defendant's  
10 economic circumstances from the United States or from the  
11 victim. The Attorney General shall certify to the court that the  
12 victim or victims owed restitution by the defendant have been  
13 notified of the change in circumstances. Upon receipt of the  
14 notification, the court may, on its own motion, or the motion of  
15 any party, including the victim, adjust the payment schedule,  
16 or require immediate payment in full, as the interests of justice  
17 require.

18 Section 3664(o) further provides, in pertinent part, that “[a] sentence that imposes an  
19 order of restitution is a final judgment notwithstanding the fact that -- (1) such a sentence  
20 can subsequently be . . . (D) adjusted under section 3664(k).”

21 Both the Probation Office and the government have submitted responses to  
22 defendant's motion. The Probation Office states that the provision in the judgment  
23 requiring a minimum payment of at least \$25 per quarter during the period of  
24 incarceration is the standard language used by the Probation Office in every sentencing  
25 recommendation in which there is a custody term with criminal monetary penalties. Both  
26 the Probation Office and the government have reviewed records from the Bureau of  
27 Prisons (“BOP”) which indicate that on May 29, 2015, defendant completed an “Inmate  
28 Financial Plan,” in which defendant voluntarily agreed to participate in the BOP’s Inmate  
Financial Responsibility Program (“IFRP”) and to make restitution payments of \$25 per  
month, rather than per quarter, beginning in June 2015. Doc. no. 83 (Lamie Decl. ¶ 10  
and Ex. B). The government has submitted a declaration by Ms. Lamie, a Correctional  
Programs Specialist for the BOP, who indicates that under the IFRP, BOP staff develop a  
financial plan for each inmate based on her financial obligations and her ability to pay.  
Lamie Decl. ¶ 5. In assessing an inmate’s ability to pay, the BOP looks both to the

1 inmate's institution resources, such as pay for prison employment, and non-institution  
2 resources, such as money the inmate receives from family. *Id.* (citing 28 C.F.R.  
3 § 545.11(b)). Participation in the IFRP is voluntary, but non-participation carries  
4 consequences such as being subject to a more stringent monthly commissary spending  
5 limitation, being quartered in the lowest housing status, and not being able to receive  
6 furlough or bonus pay. Lamie Decl. ¶ 6 (citing 28 C.F.R. § 545.11(d)).

7 Defendant's inmate trust account fund activity statement indicates that over the  
8 last six months, she has received \$1,437.93 in deposits, comprising her wages and  
9 deposits made through Western Union. See Lamie Decl. ¶ 14 and Ex. E. The BOP has  
10 also summarized all of defendant's commissary purchases over the past year, and has  
11 calculated the maximum funds available to be used toward restitution payments through  
12 the IFRP to be \$837.93. *Id.* ¶ 14. Upon review of defendant's records, Ms. Lamie  
13 concludes that the \$25 per month that defendant is currently paying toward restitution is  
14 well below the maximum payment that BOP staff may require her to pay through the  
15 IFRP. *Id.*

16 Ms. Lamie states that inmates who have concerns about the amount of money  
17 being collected through the IFRP are advised that they should raise the issue with their  
18 Unit Team at their scheduled program review. Lamie Decl. ¶ 15. As also noted by the  
19 Probation Office, the Bureau of Prisons has an internal administrative remedy procedure  
20 which allows defendant to seek a reduction in payments if she is unable to meet her  
21 monthly obligation under her Inmate Financial Plan. Lamie Decl. ¶¶ 16-17. BOP records  
22 indicate that defendant has not filed for administrative remedies concerning her current  
23 restitution payment schedule under the IFRP. Lamie Decl. ¶ 18 and Ex. H.

24 Defendant filed a reply to the Probation Office's response to her motion,  
25 expressing her concern that if "for any reason I can't make the required payment I will be  
26 placed on Financial Responsibility Program Refusal." Doc. no. 85. She also clarifies that  
27 she is "not asking to completely stop all payments, I am just asking for my FRP Plan to  
28 stay at \$25 every month or even \$50 every quarter." Doc. no. 85.

1 In light of defendant's willingness to continue paying \$25 per month in restitution,  
2 the court finds that defendant has not demonstrated a change in circumstances affecting  
3 her ability to pay restitution during imprisonment at not less than \$25 per quarter, as  
4 ordered by the court. Accordingly, defendant's motion to defer or modify her restitution  
5 payment schedule pursuant to 18 U.S.C. § 3664(k) is DENIED.

6           The Ninth Circuit has held that where the district court has properly set a  
7           restitution repayment schedule as required by the Mandatory Victims Restitution Act, “the  
8           BOP has the authority to encourage voluntary payments in excess of those required  
9           under the court’s judgment by conditioning the receipt of certain privileges during the  
10          term of imprisonment on the inmate’s participation in the IFRP.” *United States v.*  
11          *Lemoine*, 546 F.3d 1042, 1050 (9th Cir. 2008). If defendant seeks to challenge BOP’s  
12          implementation of the restitution order, she must first exhaust all available administrative  
13          remedies before filing a petition pursuant to 28 U.S.C. § 2241. See *Hernandez v.*  
14          *Campbell*, 204 F.3d 861, 864 (9th Cir. 2000) (section 2241 petitions “challenge the  
15          manner, location, or conditions of a sentence’s execution”); *Martinez v. Roberts*, 804 F.2d  
16          570, 571 (9th Cir. 1986) (per curiam) (“Federal prisoners are required to exhaust their  
17          federal administrative remedies prior to bringing a petition for a writ of habeas corpus in  
18          federal court.”); *Chua Han Mow v. United States*, 730 F.2d 1308, 1313-14 (9th Cir. 1984)  
19          (requiring prisoner to exhaust administrative remedies through the Bureau of Prisons  
20          before seeking relief from the court). Because defendant has not exhausted her  
21          administrative remedies through the BOP, the instant motion to defer restitution  
22          payments will not be construed in the alternative as a petition for writ of habeas corpus  
23          pursuant to § 2241.

## 24 IT IS SO ORDERED.

25 | Dated: February 2, 2016

  
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PHYLLIS J. HAMILTON  
United States District Judge